

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 1035

Short Title: Modify Food Tax/Merchant's Discount.

(Public)

Sponsors: Senators Kerr and Kincaid.

Referred to: Finance.

April 21, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO REVISE THE DEFINITION OF FOOD FOR SALES TAX PURPOSES
3 AND ALLOW A PERCENTAGE DISCOUNT TO MERCHANTS FOR
4 COLLECTING STATE SALES AND USE TAXES.

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 105-164.4(5) reads as rewritten:

7 "(5) The rate of three percent (3%) applies to the sales price of food that
8 meets the following conditions:

9 a. It is sold at a retail food business qualified under subsection (d)
10 of this section.

11 b. It is not otherwise exempt pursuant to G.S. 105-164.13 but would
12 be exempt pursuant to G.S. 105-164.13 if it were purchased with
13 coupons issued under the Food Stamp Program, 7 U.S.C. § 51."

14 Section 2. G.S. 105-164.4 is amended by adding a new subsection to read:

15 "(d) For the purpose of this Article, a retailer is a qualified retail food business if
16 either (i) it sells all of the staple food items listed in this subsection or (ii) more than
17 eighty percent (80%) of its gross sales are sales of one or more staple food items listed in
18 this subsection. The following are staple food items for the purpose of this subsection:

19 (1) Raw meat.

20 (2) Raw poultry.

- (3) Raw fish.
- (4) Bread.
- (5) Breadstuffs.
- (6) Cereal.
- (7) Vegetables.
- (8) Fruit.
- (9) Fruit or vegetable juices.
- (10) Dairy products.

A retailer's sales for the most recent 12-month period shall be considered in determining whether the retailer is a qualified retail food business. If the retailer has been in business less than 12 months, the period the retailer has been in business shall be considered. If the retailer has been in business for less than one reporting period, the determination shall be based on the retailer's expected sales for the first reporting period."

Section 3. G.S. 105-164.21 is reenacted and rewritten to read:

"§ 105-164.21. Merchant's discount.

(a) Amount. – Except as provided in subsection (b) of this section, a retailer who pays the retail sales or use tax imposed by this Article may deduct from the amount of the tax paid the applicable percentage discount provided in the table below, up to the following maximum discounts:

- (1) The applicable per-location cap per month for each place of business at a separate location.
- (2) For taxpayers who are not required to report on a semimonthly basis, the applicable retailer group cap per month for each retailer group.
- (3) For taxpayers who are required to report on a semimonthly basis, one-half of the applicable retailer group cap per semimonthly period for each retailer group.

<u>Returns Filed</u>	<u>Percentage Discount</u>		<u>Per-Location</u>		<u>Retailer Group</u>	
			<u>Cap</u>	<u>Cap</u>	<u>Cap</u>	<u>Cap</u>
	<u>In 1998</u>	<u>1%</u>	<u>\$30</u>	<u>\$ 500</u>		
	<u>In 1999</u>	<u>2%</u>	<u>\$40</u>	<u>\$ 750</u>		
	<u>Thereafter</u>		<u>3%</u>	<u>\$50</u>	<u>\$1,000</u>	

The discount for each location may be deducted only from the tax paid with regard to that location. For the purposes of this section, a retailer group includes all retail establishments that have one of the following relationships with one another: (i) one corporation owns, directly or indirectly, at least eighty percent (80%) of the voting stock of the others; (ii) at least eighty percent (80%) of the voting stock of the corporation is owned, directly or indirectly, by the same interests; or (iii) in the case of establishments that are not incorporated, the establishments are under the same general management, supervision, or ownership.

(b) Restrictions. – The Secretary may deny a retailer the benefit of this section for failure to pay the full tax when due as well as in cases of fraud, evasion, or failure to keep accurate and clear records as required by this Article. In order to receive the discount provided in this section, a retailer must deduct the discount when it remits the tax to the

1 Department of Revenue. A utility may not deduct the discount provided in this section
 2 on sales of electricity, piped natural gas, or telecommunications services."

3 Section 4. G.S. 105-474 reads as rewritten:

4 "**§ 105-474. Definitions; ~~construction of Article; remedies and penalties.~~**
 5 **Administration and construction of Article.**

6 This Article shall be harmonized with the North Carolina Sales and Use Tax Act to
 7 the extent practical. The merchant's discount provided in G.S. 105-164.21 does not apply
 8 to this Article. The remaining provisions of Articles 5 and 9 of this Chapter apply to this
 9 Article to the extent they are consistent with this Article.

10 ~~The definitions set forth in G.S. 105-164.3 shall apply to this Article insofar as such~~
 11 ~~definitions are not inconsistent with the provisions of this Article, and all other provisions~~
 12 ~~of Article 5 and of Article 9 of Subchapter 1, Chapter 105 of the General Statutes, as the~~
 13 ~~same relate to the North Carolina Sales and Use Tax Act shall be applicable to this~~
 14 ~~Article unless such provisions are inconsistent with the provisions of this Article. The~~
 15 ~~administrative interpretations made by the Secretary of Revenue with respect to the North~~
 16 ~~Carolina Sales and Use Tax Act, to the extent not inconsistent with the provisions of this~~
 17 ~~Article, may be uniformly applied in the construction and interpretation of this Article. It~~
 18 ~~is the intention of this Article that the provisions of this Article and the provisions of the~~
 19 ~~North Carolina Sales and Use Tax Act, insofar as practicable, shall be harmonized.~~

20 ~~The provisions with respect to remedies and penalties applicable to the North Carolina~~
 21 ~~Sales and Use Tax Act, as contained in Article 5 and Article 9, Subchapter 1, Chapter~~
 22 ~~105 of the General Statutes, shall be applicable in like manner to the tax authorized to be~~
 23 ~~levied and collected under this Article, to the extent that the same are not inconsistent~~
 24 ~~with the provisions of this Article."~~

25 Section 5. The first sentence of Section 10 of Chapter 1096 of the 1967
 26 Session Laws is amended by adding after the word "Act" the phrase ", other than G.S.
 27 105-164.21,".

28 Section 6. G.S. 105-164.21(a), as amended by Section 3 of this act, reads as
 29 rewritten:

30 "(a) Amount. – Except as provided in subsection (b), a retailer who pays the retail
 31 sales or use tax imposed by this Article may deduct from the amount of the tax paid ~~the~~
 32 applicable percentage discount provided in the table below, a discount of three percent (3%),
 33 up to the following maximum discounts:

- 34 (1) ~~The applicable per-location cap~~ Fifty dollars (\$50.00) per month for each
 35 place of business at a separate location.
- 36 (2) For taxpayers who are not required to report on a semimonthly basis, ~~the~~
 37 ~~applicable retailer group cap~~ one thousand dollars (\$1,000) per month for
 38 each retailer group.
- 39 (3) For taxpayers who are required to report on a semimonthly basis, ~~one~~
 40 ~~half of the applicable retailer group cap~~ five hundred dollars (\$500.00) per
 41 semimonthly period for each retailer group.

42	Returns Filed	Percentage	Per-Location	Retailer Group
43		Discount		Cap Cap

1		In 1998	1%	\$30	\$ 500
2		In 1999	2%	\$40	\$ 750
3		Thereafter	3%	\$50	\$1,000

4 The discount for each location may be deducted only from the tax paid with regard to
5 that location. For the purposes of this section, a retailer group includes all retail
6 establishments that have one of the following relationships with one another: (i) one
7 corporation owns, directly or indirectly, at least eighty percent (80%) of the voting stock
8 of the others; (ii) at least eighty percent (80%) of the voting stock of the corporations is
9 owned, directly or indirectly, by the same interests; or (iii) in the case of establishments
10 that are not incorporated, the establishments are under the same general management,
11 supervision, or ownership."

12 Section 7. Sections 1 and 2 of this act become effective July 1, 1997, and
13 apply to sales made on or after that date. Sections 3 through 5 of this act become
14 effective January 1, 1998, and apply to returns filed on or after that date. Section 6 of
15 this act becomes effective January 1, 2000, and applies to returns filed on or after that
16 date. The remainder of this act is effective when it becomes law.